

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

ANDRES ARELLANES,

Plaintiff,

vs.

Civ. No. 09-432 BB/RHS

JASON CLARKE, et al.,

Defendants.

**ORDER VACATING DEPOSITION**

**THIS MATTER** comes before the Court as the result of letters received by the Court from counsel for the respective parties (the letters have been filed of record in the above-captioned cause) regarding a dispute that has arisen concerning the deposition of Plaintiff's expert witness, Ernest Burwell. Both counsel advised the Court that they have no objection to the dispute being resolved based on the parties' letters and attachments. The Court has now read and considered the respective letters of the parties as well as the attachments thereto and reviewed all of the pleadings on file in the above-captioned cause and concludes that the deposition of Mr. Burwell presently scheduled for Friday, July 16, 2010, should be vacated on the terms and conditions set forth herein.

**IT IS THEREFORE ORDERED** as follows:

1. The deposition of Plaintiff Andres Arellanes' expert, Ernest Burwell, presently set for Friday, July 16, 2010, is hereby vacated.

2. On or before Wednesday, July 21, 2010, Mr. Ives shall provide Ms. Maggiore with three dates that Mr. Burwell's deposition may be taken in either Missoula or Kalispell, Montana, as the parties may agree or the Court may direct.

3. Upon receipt of the three dates of availability, Ms. Maggiore shall notice the deposition with said notice being filed on or before July 23, 2010.

4. The deposition must occur on or before August 13, 2010.

5. In the event the parties are unable to resolve the issue of the deposition being taken by video or the city in which Mr. Burwell shall travel to for the purpose of offering his deposition, then, and in such event, the parties shall file their respective motions on or before Tuesday, July 27, 2010, and any response (and notice of completion) to said motion shall be due on or before Thursday, July 29, 2010. There will be no reply to any motions filed on this subject as there is inadequate time if the parties are to comply with the deadlines imposed by the trial court.

6. The Court reserves jurisdiction to impose attorney's fees and costs at a future date as may be appropriate.

Robert Hayes Scott  
ROBERT HAYES SCOTT  
UNITED STATES MAGISTRATE JUDGE